



POLICE DEPARTMENT

August 17, 2018

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In the Matter of the Charges and Specifications : Case No.
: 2016-16378
- against - :
: Police Officer Alan D'Alessio :
: Tax Registry No. 946463 :
: 45th Precinct :
-----X

At: Police Headquarters
One Police Plaza
New York, NY 10038

Before: Honorable Paul M. Gamble
Assistant Deputy Commissioner Trials

APPEARANCES:

For the Department: Anna Krutaya, Esq.
Department Advocate's Office
One Police Plaza
New York, NY 10038

For the Respondent: Richard Murray, Esq.
305 Broadway, 14th Floor
New York, NY 10007

To:

HONORABLE JAMES P. O'NEILL
POLICE COMMISSIONER
ONE POLICE PLAZA
NEW YORK, NEW YORK 10038

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CHARGES AND SPECIFICATIONS

1. Said Police Officer Alan D'Alessio, while assigned to the 45th Precinct, on or about August 5, 2016, did fail and neglect to perform his duties as Patrol Officer, to wit: said Police Officer failed to promptly take police action and properly investigate allegations of an assault.

P.G. 202-21, Page 1, Paras. 1 & 8 – POLICE OFFICER-DUTIES AND RESPONSIBILITIES
P.G. 206-03, Page 1, Para. 25 – DISCIPLINARY MATTERS

2. Said Police Officer Alan D'Alessio, while assigned to the 45th Precinct, on or about August 5, 2016, did fail and neglect to notify a patrol supervisor after becoming aware of a violent assault which occurred within the confines of the 45th Precinct.

P.G. 221-21, Page 1, Para. 6 – POLICE OFFICER-DUTIES AND
RESPONSIBILITIES

3. Said Police Officer Alan D'Alessio, while assigned to the 45th Precinct, on or about August 5, 2016, did fail to promptly report a disposition to radio dispatcher upon completion of an assignment.

P.G. 206-03, Page 2, Para. 4 – DISCIPLINARY MATTERS

REPORT AND RECOMMENDATION

The above-named member of the Department appeared before the Court on July 18, 2018. Respondent, through his counsel, entered a plea of Guilty to the subject charges, and testified in mitigation of the penalty.

DECISION

After reviewing the evidence presented at the hearing, assessing the credibility of the witness, and Respondent having pled guilty to the subject charges, the Court finds Respondent GUILTY of Specification Nos. 1, 2, and 3. I recommend that Respondent forfeit five suspension days and 20 vacation days.

FINDINGS AND ANALYSIS

Respondent testified that he is a ten-year member of this Department (T. 10, 28). He previously served as a Master-at-Arms Third Class in the United States Navy and made several overseas deployments. Respondent is married and has four children (T. 10-11, 46). Respondent has made over 200 arrests, of which at least 50 were for felonies (T. 28).

On August 5, 2016, at approximately 2232 hours, Respondent and his partner, former Police Officer Villacis, were on patrol in the 45th Precinct, assigned to Sector KING (T. 15, 16, 17, 29). Respondent's tour that day was 1500 x 2335 hours (T. 16, 29). Respondent received a radio call of an assault in progress on Overing Street (T. 17). Respondent was informed that the victim had been punched in the face by a group of teenagers and was bleeding (T. 18, 30).

Respondent and Police Officer Villacis proceeded to the location from their last assignment at East Tremont Avenue and Bruckner Boulevard (T. 32-33). Respondent claimed that he did not arrive until nine minutes after receiving the initial call because he had mistakenly driven away from the location before realizing that he was driving in the wrong direction (T. 47-48). When he arrived at Overing Street, he spoke with a person who identified himself as an eyewitness to the assault and the individual who had called 911 (T. 18, 37). This witness informed Respondent that the victim had been punched and that some of his family members had taken him away (T. 18). Respondent also observed blood evidence on the sidewalk (T. 19, 37). Respondent admitted that he made no attempt to contact his supervisor, Sergeant Rodriguez (T. 19, 22). Respondent further admitted that he made no attempt to obtain descriptions of the alleged assailants or their direction of flight (T. 19). Respondent claimed that he performed a canvass for the alleged victim in order to obtain more information about the circumstances of the assault (T. 20). Respondent eventually contacted dispatch and classified this assignment as a "90-Z," signifying "gone on arrival," shortly before he went off-duty at 2335 hours (T. 21, 43).

Respondent admitted that he: (1) took no pedigree data from the eyewitness; (2) made no effort to secure the crime scene for the collection of evidence; and (3) made no attempt to ascertain whether any of the residences in the immediate vicinity of the assault had captured video evidence of the incident (T. 37-39).

Respondent never stepped out of his RMP while he spoke with the eyewitness and drove away once he completed their discussion (T. 20, 22). Respondent claimed that he left in an attempt to canvass the area for the victim, even though he conceded that he had no description of the victim and that he had been informed that the victim had been removed to a hospital (T. 20, 37, 38, 41-42). Respondent conceded that there is only one hospital located within the 45th Precinct, Westchester Square Hospital, which was located approximately 3-4 blocks from the location of the alleged assault and that he made no attempt to check that hospital for recent assault victims (T. 24-25, 40, 41). According to Respondent, that hospital had a practice of contacting the 45th Precinct whenever they treated someone whom they believed may have been the victim of an assault (T. 25).

Respondent explained that he did not contact his supervisor because he had no information regarding the identity of the victim or the severity of his injuries and assumed that a simple assault had resulted from a fight in which someone was punched (T. 22-23). Respondent learned two days later that the victim suffered "extremely serious" injuries, after police officers from First Platoon went to Jacobi Hospital, where the victim had been treated (T. 23). Respondent claimed that knowledge of the victim's condition would have been a significant factor in his decision whether to call his supervisor (*Id.*). Respondent conceded that even if the alleged criminal activity was only a simple assault, he still should have filed a complaint report and notified the patrol supervisor (T. 23-24).

After leaving the scene of the alleged assault, the Automatic Vehicle Locator system showed Respondent's RMP driving directly down East Tremont Avenue toward the stationhouse (T. 44-45). Respondent claimed that by the time his car was detected driving in that direction, he had already marked the assignment a "90-ZEBRA" (T. 44).

Respondent testified that his tour of duty that day had been a long one, where he performed most of the police duties because his partner was an inexperienced police officer. Respondent conceded that his actions and omissions that evening constituted bad judgment but offered no insight into his decision-making (T. 47, 51).

PENALTY

In order to determine an appropriate penalty, Respondent's service record was examined. See Matter of Pell v. Board of Educ., 34 N.Y.2d. 222, 240 (1974). Respondent was appointed to the Department on January 17, 2008. Information from his personnel record that was considered in making this penalty recommendation is contained in an attached confidential memorandum.

The Department has recommend that Respondent forfeit five suspension days and 20 vacation days. In previous cases involving the failure to properly investigate a radio call, respondents have forfeited from 15 vacation days to 30 vacation days and one-year dismissal probation (*Disciplinary Case No. 2016-15531* [October 10, 2017][Eleven-year police officer with no prior formal disciplinary history negotiated a penalty of 30 vacation days and one year dismissal probation for failing to conduct a proper investigation after having observed a live interview of a child who reported being the victim of physical abuse. Respondent did not document or inform his supervisor of the reported abuse, did not identify that subject of the allegations and interview him, and did not confer with a criminal prosecutor. While assigned to the Manhattan Child Abuse Squad, Respondent observed, via live feed, from an adjoining room the interview of a child victim who described being a victim of his stepfather's abuse. During the interview witnessed by Respondent, the child victim detailed his father's beatings, including being struck with a belt and kicked in the stomach. Respondent failed to take required police action upon hearing those statements. Approximately six weeks later, the child was taken to the emergency room and his stepfather was arrested for severe child abuse]; *Disciplinary Case No.*

2016-15230 [July 14, 2017][Eleven-year police officer, with two prior adjudications for issuing a factually false criminal court summons and criminal association, negotiated a penalty of twenty (20) vacation days for (i) failing and neglecting to prepare required arrest paperwork; (ii) failing to take police action and make an arrest after being informed by Rite Aid employees that an individual was observed shoplifting; and (iii) making improper Activity Log entries. Respondent and her partner responded to a radio run at a Rite Aid. Upon arrival, Rite Aid security personnel were holding a male for shoplifting and had prepared necessary affidavits as well as a disbarment form, which was an internal document stating the individual was no longer allowed on any Rite Aid property. Respondent stated that she had been trained years ago that if this internal disbarment form was signed, the store was not pressing charges and she was not authorized to make an arrest. She later told investigators that she now understood this to be incorrect. Respondent and her partner escorted the male out of the store and allowed him to leave the location. She marked the job as "No shoplifter" in her memo book]; *Disciplinary Case No. 2015-13361* [April 7, 2016][Ten-year police officer with no prior disciplinary history negotiated a penalty of 15 vacation days for (i) failing to properly investigate the circumstances surrounding the stabbing of an individual, in that he failed to interview witnesses or retrieve evidence at the scene, (ii) failing to voucher a knife used in the stabbing of an individual, (iii) failing to prepare a complaint report in connection with an assault, including a stabbing with a knife, (iv) failing to provide an accurate final radio disposition to the Communications Center]]).

Despite being afforded some degree of leniency because of his guilty plea, Respondent offered no evidence which would tend to mitigate the seriousness of his misconduct. Respondent denied that there was a pressing reason for him to want to go off duty that evening without delay. In the absence of evidence to the contrary, the tribunal is left to conclude that Respondent was simply, and inexcusably, derelict in the most basic duty to investigate the

circumstances of an alleged assault which was apparently serious enough to cause the victim to seek medical attention at a hospital. Respondent took no steps whatsoever to collect any evidence, whether the descriptions of the alleged assailants, their last known direction of travel or the name of the purported eyewitness. Respondent was aware that there was a single hospital within the precinct and could have canvassed the emergency room for any recent admissions seeking medical attention from any wounds which bled, yet he consciously disregarded that attempt, rationalizing that if the injuries had been, the hospital would eventually contact the precinct.

It is aggravating that Respondent chose to exhibit this attitude in the presence of a rookie police officer, who had a right to expect, as we all do, that Respondent would have performed his duties diligently.

Accordingly, I recommend that Respondent forfeit five suspension days and 20 vacation days.

Respectfully submitted,

Paul Gamble *PM*

Paul M. Gamble
Assistant Deputy Commissioner Trials

APPROVED

OCT 24 2018

James P. O'Neill
JAMES P. O'NEILL
POLICE COMMISSIONER



POLICE DEPARTMENT CITY OF NEW YORK

From: Assistant Deputy Commissioner Trials
To: Police Commissioner
Subject: CONFIDENTIAL MEMORANDUM
POLICE OFFICER ALAN D'ALESSIO
TAX REGISTRY NO. 946463
DISCIPLINARY CASE NO. 2016-16378

Respondent was appointed to the Department on January 17, 2008.

On his last three annual performance evaluations, Respondent received an overall rating of 3.0 "Competent" in 2016, and two overall ratings of 3.5 "Highly Competent/ Competent" in 2015 and 2014.

[REDACTED]

On March 15, 2017, Respondent was placed on Level I Performance Monitoring based on his negative interim performance evaluation; that monitoring remains ongoing.

Respondent has no prior formal disciplinary history.

For your consideration.

Paul Gamble *PM*

Paul M. Gamble
Assistant Deputy Commissioner Trials